



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 2

#### EMPLOYMENT INCOME: CHARGE TO TAX

#### [<sup>F1</sup>CHAPTER 5B

#### TAXABLE SPECIFIC INCOME FROM EMPLOYMENT-RELATED SECURITIES ETC: INTERNATIONALLY MOBILE EMPLOYEES

##### Textual Amendments

- F1** Pt. 2 Ch. 5B substituted (with effect in accordance with Sch. 3 para. 7(3), Sch. 9 para. 48 of the amending Act) for Pt. 2 Ch. 5A by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 9 paras. 5, 47](#)

#### **41F Taxable specific income: internationally mobile employees etc**

- (1) This section applies if—
- (a) an amount counts under Chapters 2 to 5 of Part 7 (employment-related securities etc) as employment income of an individual for a tax year (“the securities income”) in respect of an employment (“the relevant employment”), and
  - (b) one or more of the international mobility conditions is met in relation to the individual (see subsection (2)).
- (2) The “international mobility conditions” are—
- (a) that any part of the relevant period (see section 41G) is within a tax year for which section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual;

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- (b) that any part of the relevant period is within a tax year for which the individual is not UK resident;
  - (c) that any part of the relevant period is within the overseas part of a tax year that is a split year with respect to the individual.
- (3) An amount equal to—
- SI – FSI**
- is an amount of “taxable specific income” from the relevant employment for the tax year mentioned in subsection (1)(a).
- (4) In subsection (3)—
- (a) SI is the amount of the securities income, and
  - (b) FSI is the amount of the securities income that is “foreign”.
- (5) The amount of the securities income that is “foreign” is the sum of any chargeable foreign securities income and any unchargeable foreign securities income (see sections 41H to 41L).
- (6) The full amount of any chargeable foreign securities income which is remitted to the United Kingdom in a tax year is an amount of “taxable specific income” from the relevant employment for that year.
- (7) Subsection (6) applies whether or not the relevant employment is held when the chargeable foreign securities income is remitted.
- (8) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis), treat the relevant securities or relevant securities option as deriving from the chargeable foreign securities income.
- (9) But where—
- (a) the chargeable event is the disposal of the relevant securities or the assignment or release of the relevant securities option, and
  - (b) the individual receives consideration for the disposal, assignment or release of an amount equal to or exceeding the market value of the relevant securities or relevant securities option,
- for the purposes of that Chapter treat the consideration (and not the relevant securities or relevant securities option) as deriving from the chargeable foreign securities income.
- (10) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom”.
- (11) In this section and section 41G—
- “the chargeable event” means the event giving rise to the securities income, and
  - “the relevant securities” or “the relevant securities option” means the employment-related securities or employment-related securities option by virtue of which the amount mentioned in subsection (1)(a) counts as employment income.

#### **41G Section 41F: the relevant period**

- (1) “The relevant period” is to be determined as follows.

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- (2) In the case of an amount that counts as employment income by virtue of Chapter 2 of Part 7 (restricted securities) (other than where subsection (4) applies) or Chapter 3 of that Part (convertible securities), the relevant period—
  - (a) begins with the day of the acquisition, and
  - (b) ends with the day of the chargeable event.
- (3) In the case of an amount that counts as employment income by virtue of section 446B (securities with artificially depressed market value: charge on acquisition), the relevant period is the tax year in which the acquisition occurs.
- (4) In a case within subsection (1)(aa) or (b) of section 446E (securities with artificially depressed market value: charge on restricted securities) where an amount counts as employment income by virtue of that section, the relevant period—
  - (a) begins at the beginning of the tax year in which the chargeable event is treated as occurring, and
  - (b) ends with the day on which the chargeable event is treated as occurring.
- (5) In the case of an amount that counts as employment income by virtue of section 446L (securities with artificially enhanced market value), the relevant period—
  - (a) begins at the beginning of the tax year in which the valuation date (within the meaning of that section) falls, and
  - (b) ends with the valuation date.
- (6) In the case of an amount that counts as employment income by virtue of section 446U (securities acquired for less than market value: discharge of notional loan) or 446UA (avoidance cases in respect of such securities)—
  - (a) if the relevant securities were acquired by virtue of the exercise of a securities option (“the option”), the relevant period—
    - (i) begins with the day of the acquisition of the option, and
    - (ii) ends with the day the option vests, and
  - (b) otherwise, the relevant period is—
    - (i) the tax year in which the notional loan (within the meaning of Chapter 3C of Part 7) is treated as made, or
    - (ii) if the chargeable event occurs in that year, the period beginning at the beginning of that year and ending with the day of that event.
- (7) In the case of an amount that counts as employment income by virtue of—
  - (a) Chapter 3D of Part 7 (securities disposed of for more than market value), or
  - (b) Chapter 4 of that Part (post-acquisition benefits from securities),the relevant period is the tax year in which the chargeable event occurs.
- (8) In the case of an amount that counts as employment income by virtue of Chapter 5 of Part 7 (employment-related securities options), the relevant period—
  - (a) begins with the day of the acquisition, and
  - (b) ends with the day of the chargeable event or, if earlier, the day the relevant securities option vests.
- (9) If the relevant period determined in accordance with subsections (2) to (8) would not, in all the circumstances, be just and reasonable, the relevant period is to be such period as is just and reasonable.

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- (10) In this section “the acquisition” has the same meaning as in Chapters 2 to 4 or Chapter 5 of Part 7 (see section 421B or 471).
- (11) For the purposes of this section an option “vests”—
- (a) when it becomes exercisable, or
  - (b) if earlier, when it becomes exercisable subject only to a period of time expiring.
- (12) See section 41F(11) for the definitions of “the chargeable event”, “the relevant securities” and “the relevant securities option”.

#### **41H Section 41F: chargeable and unchargeable foreign securities income**

- (1) The extent to which the securities income is “chargeable foreign securities income” or “unchargeable foreign securities income” is to be determined as follows.
- (2) Treat an equal amount of the securities income as accruing on each day of the relevant period.
- (3) If any part of the relevant period is within a tax year to which subsection (4) applies, the securities income treated as accruing in that part of the relevant period is “chargeable foreign securities income”.

This is subject to subsection (9) and section 41I (limit where duties of associated employment performed in UK).

- (4) This subsection applies to a tax year if—
  - (a) section 809B, 809D or 809E of ITA 2007 applies to the individual for the year,
  - (b) the individual does not meet the requirement of section 26A for the year (reading references there to the employee as references to the individual),
  - (c) the relevant employment is with a foreign employer, and
  - (d) the duties of the relevant employment are performed wholly outside the United Kingdom in the year.
- (5) But subsection (4) does not apply to a tax year if section 24A applies in relation to the relevant employment for the tax year.
- (6) If any part of the relevant period is within a tax year to which subsection (7) applies—
  - (a) if the duties of the relevant employment are performed wholly outside the United Kingdom, the securities income treated as accruing in that part of the relevant period is “chargeable foreign securities income”, and
  - (b) if some, but not all, of those duties are performed outside the United Kingdom—
    - (i) the securities income mentioned in paragraph (a) is to be apportioned (on a just and reasonable basis) between duties performed in the United Kingdom and duties performed outside the United Kingdom, and
    - (ii) the income apportioned in respect of duties performed outside the United Kingdom is “chargeable foreign securities income”.

This is subject to subsection (9).

- (7) This subsection applies to a tax year if—

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- (a) section 809B, 809D or 809E of ITA 2007 applies to the individual for the year,
  - (b) the individual meets the requirement of section 26A for the year (reading references there to the employee as references to the individual), and
  - (c) some or all of the duties of the relevant employment are performed outside the United Kingdom in the year.
- (8) If any part of the relevant period is within a tax year for which the individual is not UK resident—
- (a) if the duties of the relevant employment are performed wholly outside the United Kingdom in that year, the securities income treated as accruing in that part of the relevant period is “unchargeable foreign securities income”, or
  - (b) if some, but not all, of those duties are performed outside the United Kingdom in that year—
    - (i) the securities income mentioned in paragraph (a) is to be apportioned (on a just and reasonable basis) between duties performed in the United Kingdom and duties performed outside the United Kingdom, and
    - (ii) the income apportioned in respect of duties performed outside the United Kingdom is “unchargeable foreign securities income”.
- (9) If any part of the relevant period is within the overseas part of a tax year that is a split year with respect to the individual—
- (a) if the duties of the relevant employment are performed wholly outside the United Kingdom in that overseas part, the securities income treated as accruing in that part of the relevant period is “unchargeable foreign securities income”, or
  - (b) if some, but not all, of those duties are performed outside the United Kingdom in that overseas part—
    - (i) the securities income mentioned in paragraph (a) is to be apportioned (on a just and reasonable basis) between duties performed in the United Kingdom and duties performed outside the United Kingdom, and
    - (ii) the income apportioned in respect of duties performed outside the United Kingdom is “unchargeable foreign securities income”.
- (10) If subsection (4) does not apply to a tax year by virtue of subsection (5), it is to be assumed for the purposes of section 41L that it is just and reasonable for none of the securities income treated as accruing in the tax year to be “chargeable foreign securities income”.
- (11) See section 41J for further provision about the location of employment duties.
- (12) This section is subject to—
- (a) section 41K (securities income from overseas Crown employment), and
  - (b) section 41L (chargeable and unchargeable foreign securities income: just and reasonable apportionment).

#### **41I Limit on “chargeable foreign securities income” where duties of associated employment performed in UK**

- (1) This section imposes a limit on the extent to which section 41H(3) applies in relation to a period when—

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- (a) the individual holds associated employments as well as the relevant employment, and
  - (b) the duties of the associated employments are not performed wholly outside the United Kingdom.
- (2) The amount of the securities income for the period that is to be regarded as “chargeable foreign securities income” is limited to such amount as is just and reasonable, having regard to—
- (a) the employment income for the period from all the employments mentioned in subsection (1)(a),
  - (b) the proportion of that income that is general earnings to which section 22 applies (chargeable overseas earnings),
  - (c) the nature of, and time devoted to, the duties performed outside the United Kingdom, and those performed in the United Kingdom, in the period, and
  - (d) all other relevant circumstances.
- (3) In this section “associated employments” means employments with the same employer or with associated employers.
- (4) Section 24(5) and (6) (meaning of “associated employer”) applies for the purposes of this section.

#### **41J Location of employment duties**

- (1) The following provisions apply for the purposes of this Chapter—
- (a) section 39(1) and (2), and
  - (b) section 40 (but as if in subsections (3) and (4) of that section references to section 24(1)(b) were to section 41I(1)(b)).
- (2) Duties of an employment performed in the UK sector of the continental shelf in connection with exploration or exploitation activities are to be treated for the purposes of this Chapter as being performed in the United Kingdom.
- (3) In subsection (2) “the UK sector of the continental shelf” and “exploration or exploitation activities” have the same meaning as in section 41 (treatment of general earnings from employment in the UK sector of the continental shelf).

#### **41K Securities income from overseas Crown employment**

- (1) If securities income is from overseas Crown employment subject to United Kingdom tax, it is (notwithstanding any other provision of this Chapter) not “foreign”.
- (2) “Securities income from overseas Crown employment” means securities income from Crown employment (within the meaning given by section 28(2)) in respect of duties performed outside the United Kingdom.
- (3) Such securities income is to be taken as being “subject to United Kingdom tax” unless, by virtue of subsection (4), it falls within an exception contained in an order under section 28(5).
- (4) Subject to any provision made in an order under section 28(5) for the purposes of this section, provisions made in an order under that section for the purposes of excepting general earnings from overseas Crown employment from the operation of

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section 27(2) also have effect for the purposes of excepting securities income from such employment from the operation of subsection (1).

- (5) For the purposes of this section, if securities income is partly from overseas Crown employment subject to United Kingdom tax, a just and reasonable proportion of the securities income is to be taken to be from such employment.

#### **41L Chargeable and unchargeable foreign securities income: just and reasonable apportionment**

- (1) This section applies if the proportion of the securities income that would otherwise be regarded as “chargeable foreign securities income” or “unchargeable foreign securities income” is not, having regard to all the circumstances, just and reasonable.
- (2) The amounts of the securities income that are “chargeable foreign securities income” and “unchargeable foreign securities income” are such amounts as are just and reasonable (rather than the amounts calculated in accordance with section 41H).]

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